

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

Slush Puppie Limited,

Plaintiff,

v.

The ICEE Company,

Defendant.

Case No. 1:19-cv-189

Judge Michael R. Barrett

**ORDER**

This matter is before the Court on two related motions. Non-parties Benesch, Friedlander, Coplan & Aronoff, LLP and individual attorneys Mark Avsec, Elizabeth R. Emanuel, Matthew D. Gurbach, Ronald L. House, Jennifer M. Turk, and Eric Larson Zalud (collectively, “Benesch”) have asked the Court to strike (or not consider) Defendant The ICEE Company’s reply (Doc. 98) in support of its motion (Doc. 89) for sanctions against them. (Doc. 101).<sup>1</sup> Alternatively, in the event the Court declines to strike (or not consider) ICEE’s reply, Benesch moves for leave to file a sur-reply. (*Id.* PAGEID 2850, 2857). Benesch has also filed a separate motion (Doc. 107) for leave to file a sur-reply to ICEE’s reply in support of sanctions, with its proposed memorandum (Doc. 107-1) attached.

ICEE opposes Benesch’s motion to strike (or not consider) ICEE’s reply in support of sanctions but does not object to Benesch’s alternate request to file a sur-reply. (Doc. 102 PAGEID 2859–2862, 2862). To this end, ICEE asks the Court to set oral argument so that it “will have the opportunity to address any points made in the

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<sup>1</sup> Benesch also filed a reply (Doc. 104) in support of its motion.

sur-reply brief.” (*Id.* PAGEID 2862). ICEE also responds to Benesch’s separate motion (Doc. 107) for leave by repeating that it does not object to Benesch filing a sur-reply. (Doc. 108 PAGEID 3116). In fact, ICEE asks the Court to grant Benesch’s motion (Doc. 107) for leave, deem Benesch’s proposed sur-reply (Doc. 107-1) filed, and set a conference to schedule an evidentiary hearing on its motion (Doc. 89) for sanctions. (Doc. 108 PAGEID 3121).

Benesch’s motion (Doc. 101) to strike (or not consider) ICEE’s reply (Doc. 98) in support of ICEE’s motion (Doc. 89) for sanctions is **DENIED**; Benesch’s alternate motion (Doc. 101) for leave to file a sur-reply, however, is **GRANTED**. Benesch’s separate motion (Doc. 107) for leave to file a sur-reply is concomitantly **GRANTED**; Benesch shall file its proposed sur-reply (Doc. 107-1) as a stand-alone document within **five** business days of the entry of this Order. ICEE’s request for oral argument (Doc. 102 PAGEID 2862) is **DENIED as moot** because ICEE has since addressed (see Doc. 108) the points made in Benesch’s (proposed-at-the-time) sur-reply. ICEE’s request to set an evidentiary hearing (Doc. 108 PAGEID 3121) on its motion (Doc. 89) for sanctions is **DENIED**; at this juncture, the Court concludes that it needs no further evidence to decide whether to award sanctions.

**IT IS SO ORDERED.**

/s/ Michael R. Barrett  
JUDGE MICHAEL R. BARRETT